

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a left knee injury causally related to the accepted September 29, 2015 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On February 24, 2016 appellant, then a 50-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that, on September 29, 2015 while delivering mail, he placed a package on the ground and noticed that his left foot was on top of a rattlesnake and he immediately jumped. He was diagnosed with a tear of the meniscus on the left knee. Appellant did not immediately stop work.

Appellant was treated by Dr. Leigh F. Nordstrom, a Board-certified internist, on October 22, 2015 for left knee pain and swelling which began on September 28, 2015. He reported that, while working as a mail carrier and delivering a package, he accidentally stepped on a rattlesnake and jumped back. Dr. Nordstrom noted that appellant's history was significant for left knee arthroscopy in 1981.

In an attending physician's report (Form CA-20) dated March 31, 2016, Dr. J. Scott Ellis, an osteopath Board-certified in orthopedic surgery, noted that on September 29, 2015 appellant was bitten by a snake while delivering mail and twisted his left knee. He found complex tearing involving the posterior horn of the medial meniscus. Dr. Ellis noted by checking a box marked "Yes" that appellant's condition was caused or aggravated by an employment activity. He performed a left knee arthroscopy and noted that appellant was totally disabled from March 22 to May 9, 2016.

By decision dated April 11, 2016, OWCP denied appellant's traumatic injury claim finding that he failed to submit medical evidence establishing that a medical condition was diagnosed in connection with the accepted work incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 22, 2016 appellant requested an oral hearing before an OWCP hearing representative, which was held on December 14, 2016.

Appellant was treated by Dr. Ellis on January 12, 2017. Dr. Ellis reported that appellant was working as a postal worker and alleged that on September 29, 2015 appellant injured his left knee when he was squatting down outside a residence and noticed a rattlesnake and jumped up and twisted his knee. He noted that this action could have caused a meniscus tear. Appellant's history included a left knee arthroscopy when he was 16-years-old. On February 10, 2016 Dr. Ellis noted positive findings on examination of the left knee. He also referenced a magnetic resonance

³ Docket No. 17-0993 (issued November 20, 2017).

imaging scan arthrogram of the left knee revealed a complex tear of the medial meniscus and grade 3 and 4 chondromalacia of the medial femoral condyle. Appellant underwent arthroscopic surgery on March 22, 2016. On September 7, 2016 he reported left knee pain after mowing grass. Dr. Ellis diagnosed sprain or strain of the left knee.

By decision dated February 2, 2017, an OWCP hearing representative affirmed, as modified, OWCP's April 11, 2016 decision. The hearing representative determined that appellant had not established that he experienced the employment-related incident at the time, place, and in the manner alleged and, therefore, had not established the factual component of his claim.

On April 6, 2017 appellant, through counsel, appealed to the Board. By decision dated November 20, 2017, the Board affirmed as modified OWCP's February 2, 2017 decision. The Board found that the factual evidence established that on September 29, 2015 appellant was performing his duties as a rural carrier delivering packages when he observed a rattlesnake and jumped. However, the Board denied the claim finding insufficient medical evidence to establish that the accepted September 29, 2015 employment incident caused or aggravated his claimed injury.⁴

On September 4, 2018 appellant, through counsel, requested reconsideration. Appellant submitted a report from Dr. Ellis dated August 6, 2018 who provided further medical explanation of his diagnoses. Dr. Ellis indicated that while appellant was at work on September 28, 2015 appellant sustained a left knee meniscus tear while jumping away from a rattlesnake. He further noted that it was during this motion that appellant twisted his left knee, resulting in a meniscus tear. Dr. Ellis opined that appellant's injuries were easily attainable with the quick motions that occurred on this date.

By decision dated June 28, 2019, OWCP denied modification of the prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,⁶ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related

⁴ *Id.*

⁵ *Supra* note 2.

⁶ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.⁷ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.⁹ There are two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.¹⁰ The second component is whether the employment incident caused a personal injury.¹¹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹² A physician's opinion on whether there is causal relationship between the diagnosed condition and the employment incident must be based on a complete factual and medical background.¹³ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition, and appellant's specific employment incident.¹⁴

In a case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁵

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left knee injury causally related the accepted September 29, 2015 employment incident.

Preliminarily, the Board notes that findings made in prior Board decisions are *res judicata*, absent further review by OWCP under section 8128 of FECA. It is therefore unnecessary for the

⁷ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

¹⁰ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹¹ *E.M.*, *id.*; *John J. Carlone*, 41 ECAB 354 (1989).

¹² *S.S.*, *supra* note 9; *Robert G. Morris*, 48 ECAB 238 (1996).

¹³ *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁴ *Id.*

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). See *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

Board to consider the evidence appellant submitted prior to the issuance of OWCP's June 28, 2019 decision because the Board considered that evidence in its November 20, 2017 decision.¹⁶

Following the Board's November 20, 2017 decision, appellant requested reconsideration and submitted a report from Dr. Ellis dated August 6, 2018 who indicated that while appellant was at work on September 28, 2015 he sustained a left knee meniscus tear while jumping away from a rattlesnake. Dr. Ellis suggested that it was during this motion that appellant twisted his left knee, resulting in a meniscus tear. He concluded that appellant's injuries were easily attainable with quick motions. While Dr. Ellis provided an affirmative opinion which supported causal relationship, he did not provide a pathophysiological explanation as to how the accepted incident either caused or contributed to his diagnosed conditions.¹⁷ The Board has consistently held that complete medical rationalization is particularly necessary when there are preexisting conditions involving the same body part,¹⁸ and has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition in such cases.¹⁹ Dr. Ellis' report fails, in any way, to explain why appellant's current knee condition is not merely the progression of his preexisting disabled knee. Thus, the Board finds that the August 6, 2018 report from Dr. Ellis is insufficient to establish causal relationship.

As appellant has not submitted the necessary rationalized medical evidence to support his claim for a left knee injury causally related to the accepted September 29, 2015 employment incident, he has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish a left knee injury causally related to the accepted September 29, 2015 employment incident.

¹⁶ *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *M.D.*, Docket No. 20-0007 (issued May 13, 2020).

¹⁷ *See R.L.*, Docket No. 18-1316 (issued March 15, 2019); *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

¹⁸ *K.R.*, Docket No. 18-1388 (issued January 9, 2019).

¹⁹ *See e.g., A.J.*, Docket No. 18-1116 (issued January 23, 2019); *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *J.B.*, Docket No. 17-1870 (issued April 11, 2018); *E.D.*, Docket No. 16-1854 (issued March 3, 2017); *P.O.*, Docket No. 14-1675 (issued December 3, 2015).

ORDER

IT IS HEREBY ORDERED THAT the June 28, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 2, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board